UNITED NATIONS

DECLARATION ON SOCIAL AND LEGAL PRINCIPLES RELATING TO THE PROTECTION AND WELFARE OF CHILDREN, WITH SPECIAL REFERENCE TO FOSTER PLACEMENT AND ADOPTION NATIONALLY AND INTERNATIONALLY

Department of Public Information

C H I L D R E N

The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally had its roots in a General Assembly resolution adopted in 1972. The text was initially drafted in 1979 by the Commission for Social Development, following the Commission's consideration of the work of a Group of Experts on Adoption and Placement of Children, convened the previous year to prepare such a draft.

Over the following years, the draft was circulated to Governments for their views. In 1985 and 1986, consultations were held between Member States under whose different legal systems various alternative institutions existed to provide care to children who could not be cared for by their own parents. The objective was to incorporate into a single declaration different, and in some ways conflicting, juridical principles governing adoption and foster placement, as well as religious laws and practices.

On 3 December 1986, the General Assembly adopted the agreed text without a vote.

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General Assembly Resolution 41/85

The General Assembly,

Recalling its resolutions 36/167 of 16 December 1981, 37/115 of 16 December 1982, 38/142 of 19 December 1983 and 39/89 of 13 December 1984, and its decision 40/422 of 11 December 1985,

Taking note of the draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, as submitted by the Economic and Social Council by its resolution 1979/28 of 9 May 1979,

Taking note with appreciation of the work done on this question in the Third and Sixth Committees, as well as the efforts made by Member States representing different legal systems, during the consultations held at Headquarters from 16 to 27 September 1985 and early in the forty-first session, to join in the common endeavour of completing the work on the draft Declaration,

Adopts the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, the text of which is annexed to the present resolution.

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally

The General Assembly,

Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling also the Declaration of the Rights of the Child, which it proclaimed by its resolution 1386(XIV) of 20 November 1959,

Reaffirming principle 6 of that Declaration, which states that the child shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security,

Concerned at the large number of children who are abandoned or become orphans owing to violence, internal disturbance, armed conflicts, natural disasters, economic crises or social problems,

Bearing in mind that in all foster placement and adoption procedures the best interests of the child should be the paramount consideration,

Recognizing that under the principal legal systems of the world, various valuable alternative institutions exist, such as the Kafala of Islamic Law, which provide substitute care to children who cannot be cared for by their own parents,

Recognizing further that only where a particular institution is recognized and regulated by the domestic law of a State would the provisions of this Declaration relating to that institution be relevant and that such provisions would in no way affect the existing alternative institutions in other legal systems,

Conscious of the need to proclaim universal principles to be taken into account in cases where procedures are instituted relating to foster placement or adoption of a child, either nationally or internationally,

Bearing in mind, however, that the principles set forth hereunder do not impose on States such legal institutions as foster placement or adoption,

Proclaims the following principles:

A. GENERAL FAMILY AND CHILD WELFARE

Article 1

Every State should give a high priority to family and child welfare.

Article 2

Child welfare depends upon good family welfare.

Article 3

The first priority for a child is to be cared for by his or her own parents.

Article 4

When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute—foster or adoptive—family or, if necessary, by an appropriate institution should be considered.

Article 5

In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

Article 6

Persons responsible for foster placement or adoption procedures should have professional or other appropriate training.

Article 7

Governments should determine the adequacy of their national child welfare services and consider appropriate actions.

Article 8

The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of a foster placement, adoption or any alternative régime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative.

Article 9

The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care, unless this is contrary to the child's best interests.

B. FOSTER PLACEMENT

Article 10

Foster placement of children should be regulated by law.

Article 11

Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

Article 12

In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.

C. ADOPTION

Article 13

The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

Article 14

In considering possible adoption placements, persons responsible for them should select the most appropriate environment for the child.

Article 15

Sufficient time and adequate counselling should be given to the child's own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child's future as early as possible.

Article 16

The relationship between the child to be adopted and the prospective adoptive parents should be observed by child welfare agencies or services prior to the adoption. Legislation should ensure that the child is recognized in law as a member of the adoptive family and enjoys all the rights pertinent thereto.

Article 17

If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.

Article 18

Governments should establish policy, legislation and effective supervision for the protection of children in-

volved in intercountry adoption. Intercountry adoption should, wherever possible, only be undertaken when such measures have been established in the States concerned.

Article 19

Policies should be established and laws enacted, where necessary, for the prohibition of abduction and of any other act for illicit placement of children.

Article 20

In intercountry adoption, placements should, as a rule, be made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption. In no case should the placement result in improper financial gain for those involved in it.

Article 21

In intercountry adoption through persons acting as agents for prospective adoptive parents, special precautions should be taken in order to protect the child's legal and social interests.

Article 22

No intercountry adoption should be considered before it has been established that the child is legally free for adoption and that any pertinent documents necessary to complete the adoption, such as the consent of competent authorities, will become available. It must also be established that the child will be able to migrate and to join the prospective adoptive parents and may obtain their nationality.

Article 23

In intercountry adoption, as a rule, the legal validity of the adoption should be assured in each of the countries involved.

Article 24

Where the nationality of the child differs from that of the prospective adoptive parents, all due weight shall be given to both the law of the State of which the child is a national and the law of the State of which the prospective adoptive parents are nationals. In this connection due regard shall be given to the child's cultural and religious background and interests.

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